

2014 Tax Reporting

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Don't Forget About Your Foreign Financial Assets

U.S. citizens, resident aliens and certain non-resident aliens who held any interest in "specified foreign financial assets" at any point during 2014 may be required to file IRS Form 8938 (Statement of Specified Foreign Financial Assets) with their 2014 U.S. federal income tax returns.¹ Penalties for non-compliance are significant, so it is imperative for individual U.S. taxpayers to evaluate whether an IRS Form 8938 is required and, if required, to ensure that such form is properly completed and filed with their 2014 U.S. federal income tax returns.

This information reporting obligation is in addition to the FBAR (Report of Foreign Bank Accounts – FinCEN Form 114) which, if applicable, must be filed separately by June 30, 2015.

The following summary sets forth a description of:

1. The types of foreign assets that may need to be reported to the IRS;
2. The applicable reporting thresholds;
3. How foreign assets are valued for this purpose;
4. The information that must be disclosed if the thresholds are met;
5. The consequences of non-compliance; and
6. The interaction between IRS Form 8938 and FBAR.

What is a "Specified Foreign Financial Asset"?

For purposes of IRS Form 8938, the term "specified foreign financial asset" generally includes:

1. Financial accounts maintained by foreign financial institutions (*i.e.*, foreign banks, brokers and custodians); and
2. Foreign assets held for investment, such as stock or securities issued by a non-U.S. person, financial instruments and contracts that have non-U.S. issuers or counterparties, and any interest in a non-U.S. entity.

Accordingly, in addition to financial accounts maintained by foreign financial institutions, "specified foreign financial assets" generally include (but are not limited to):

1. Interests in foreign corporations, partnerships, hedge funds, private equity funds, mutual funds, trusts, estates, pension plans and deferred compensation plans;
2. Foreign swaps, options and derivative contracts; and
3. Loans to foreign persons.

What are the Reporting Thresholds?

The aggregate value of a U.S. taxpayer's "specified foreign financial assets" must exceed either of the following thresholds for the applicable taxpayer category in order to trigger the IRS Form 8938 reporting requirement:

Taxpayer	Aggregate Value on Last Day of Tax Year	Aggregate Value at Any Time During Tax Year
Unmarried/Married Filing Separately (Living in U.S.)	\$50,000	\$75,000
Married Filing Jointly (Living in U.S.)	\$100,000	\$150,000
Unmarried/Married Filing Separately (Living Abroad*)	\$200,000	\$300,000
Married Filing Jointly (Living Abroad*)	\$400,000	\$600,000

* “Living Abroad” means that (1) a U.S. taxpayer’s tax home is outside the United States and the taxpayer is a bona fide resident of a non-U.S. jurisdiction for the entire tax year, or (2) a U.S. taxpayer is a U.S. resident who is physically present in a non-U.S. jurisdiction for at least 330 days during a period of 12 consecutive months ending in the tax year.

How are “Specified Foreign Financial Assets” Valued?

In general, the value of a “specified foreign financial asset” for purposes of determining whether the applicable reporting threshold has been met is the asset’s fair market value (at the end of the tax year) or a reasonable estimate of the asset’s maximum fair market value (during the tax year), as applicable. If a foreign financial institution provides account statements at least annually, the taxpayer may rely on such statements to determine the fair market value of a foreign financial account. Otherwise, the taxpayer may rely on a reasonable estimate of the fair market value of a “specified foreign financial asset” as of the last day of the tax year on which the taxpayer held such asset, unless the taxpayer has actual knowledge (or reason to know, based on readily accessible information) that such value does not reflect a reasonable estimate of the maximum value of the asset. Third-party appraisals are not required. Valuations denominated in foreign currencies must be converted into U.S. dollars using conversion ratios provided by the U.S. Treasury Department or other publicly-available sources (e.g., exchange rates posted on the Internet), as of the last day of the relevant tax year. Note, however, that if a non-U.S. Treasury exchange rate is used, the source of such rate must be disclosed on IRS Form 8938.

What Must be Disclosed to the IRS if Reporting is Required?

If reporting is required, the information that must be disclosed on IRS Form 8938 for each “specified foreign financial asset” generally includes:

1. A description of the account or asset;
2. Information regarding whether the account or asset was acquired or disposed of during the tax year;
3. The maximum value of the account or asset during the tax year;
4. The name and address of the relevant foreign financial institution, issuer or counterparty;
5. The tax attributes of the account or asset for the tax year (e.g., income, gains, losses, deductions, etc.) and the schedule, form, or return filed with the IRS on which the tax attributes were reported;
6. The foreign currency in which the account or asset is maintained or denominated and the exchange rate used to determine the account’s or asset’s U.S. dollar value; and
7. If the taxpayer reported the account or asset on certain other forms, as listed in the following section, the number and type of such forms filed.

If Assets Are Reported on Certain Other IRS Forms, Must They Also Be Reported on IRS Form 8938?

A taxpayer need not report details about any asset on IRS Form 8938 if such asset is reported on one or more of the following forms that is timely filed with the IRS for the same tax year:

1. IRS Form 3520 (Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts);
2. IRS Form 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner);
3. IRS Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations);
4. IRS Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund); or

5. IRS Form 8865 (Return of U.S. Persons with Respect to Certain Foreign Partnerships).

Instead, the taxpayer must identify on IRS Form 8938 (1) the type of form on which the taxpayer reported the asset; and (2) how many forms of each type were filed.

What are the Penalties for Non-Compliance?

If a taxpayer is required to file IRS Form 8938, but fails to file a complete and correct IRS Form 8938 by the due date (including extensions) for the underlying U.S. federal income tax return, the taxpayer may be subject to a penalty of \$10,000 (which may be increased to \$60,000 for continued delinquency after the IRS issues a notice of the failure to file). In addition, if a taxpayer underpays his or her tax as a result of a transaction involving an undisclosed “specified foreign financial asset,” the taxpayer may have to pay a penalty equal to 40% of that underpayment. Criminal penalties may also apply.

How does IRS Form 8938 Interact with the FBAR?

As stated above, the IRS Form 8938 requirement is in addition to any FBAR requirement that may also apply. Despite any potential overlap in the information that must be disclosed on IRS Form 8938 and the FBAR, if a taxpayer is required to file both forms, filing one does not relieve a taxpayer from the obligation of filing the other. The 2014 FBAR, if required, must be filed electronically with the U.S. Treasury by June 30, 2015.

In addition, if a taxpayer has an FBAR filing obligation with respect to 2014, he or she may also have a disclosure requirement on his or her 2014 IRS Form 1040, Schedule B, Part III. Accordingly, although the FBAR is not filed with the taxpayer’s U.S. federal income tax return, the taxpayer may have to check a box on his or her 2014 federal income tax return to notify the IRS that a 2014 FBAR is required.

We encourage U.S. individual taxpayers to consult with their personal tax advisers to determine whether they have IRS Form 8938 and/or FBAR filing obligations.

1. The IRS and U.S. Treasury anticipate issuing final regulations that will require U.S. entities to file IRS Form 8938 if they meet certain ownership percentage thresholds. Until such final regulations are issued, however, only individuals must file IRS Form 8938.²

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